

REMARKS

This Amendment is submitted in response to the Office Action dated July 18, 2001. In the Office Action, the Patent Office rejected Claims 9-14 under 35 U.S.C. §102(b) as being anticipated by *CyberDiner Internet Café Systems*, as demonstrated by the *Blue Ginger* webpage at the *Boston Globe* website. Additionally, Claims 1-8 and 15-20 were not considered in the Office Action, as being drawn to a non-elected invention. Additionally, the Office Action requested information regarding devices and/or methods infringing Applicant's claims. Finally, the drawings were objected to under 37 CFR §1.83(a) as not showing necessary features of the claimed invention.

By the present Amendment, Applicant submits hereinafter responses to the rejections of Claims 9-14 and to all inquiries set forth in the Office Action. In addition, new Claims 21-29 were added to define further methods of the present invention.

(105) With respect to the inquiry regarding devices and/or methods in use or on sale, or previously in use or on sale, infringing upon Applicant's claims in which Applicant is aware of, Applicant submits the following: To the best of Applicant's knowledge, *AvantGo, Inc.* and *Vindigo, Inc.* (hereinafter "AvantGo" and "Vindigo", respectively) manufacture, produce, and/or sell software that allows a user to input information relating to a restaurant into an apparatus, such as a wireless personal assistant, and submit the information over a computer network, such as the Internet, and allow the information to be viewed by

others. As such, Applicant submits that AvantGo and Vindigo are infringing upon Applicant's claims. Further, Applicant submits that *Nextcell, Sony, Microsoft, Casio, Compaq, HandRes.com, Handspring, Hewlett-Packard, IBM, My Docs Online, iDine, OminSky, Palm, Symbol Technologies* and *Kyocera Wireless* also infringe upon Applicant's claims. Each of these companies allow users to download software from AvantGo and/or Vindigo to devices manufactured and/or sold by their companies.

Applicant is unaware of the earliest dates of use/and or sale of any of the above products and/or services. The first use and/or sale Applicant became aware of regarding the infringement of Applicant's claims was by Vindigo on May 8, 2001. All other submitted uses and/or sales were discovered subsequent to this date.

With respect to the claims, Applicant submits that all claims of this application, Claims 1-20, are infringed; however, only Claims 9-14 are currently being examined in this application. The remaining claims were restricted in the Office Action dated July 18, 2001. Independent Claim 9 requires a method for transmitting real-time information regarding a restaurant by a patron of the restaurant. The method has the steps of: providing a first apparatus having an input means wherein the input means allows entry of the real-time information by the patron of the restaurant; inputting the real-time information into the input means of the first apparatus wherein the real-time information includes information regarding the

restaurant; and transmitting the real-time information to a destination remote from the restaurant. Applicant submits that Claim 9 is being infringed by, for example, at least *Palm*.

With respect to dependent Claim 10, this claim further requires transmitting the real-time information regarding the restaurant to a display means to be viewed by a person outside of the restaurant. Applicant submits that dependent Claim 10 is infringed by, for example, at least *Palm, Inc.* *Palm* manufactures, uses and/or sells *Palm* handheld computers, such as handheld models m505, m500, m105, m100, VIIx, IIIx, IIIc, and IIIxe to view restaurant reviews on a display screen through accessing *AvantGo* outside a restaurant and further includes all of the steps defined by independent Claim 9.

Dependent Claim 11 further requires the step of providing a network on which the real-time information is received, stored and retrieved from the network. Applicant submits that dependent Claim 11 is infringed by, for example, at least *Palm*. *Palm* provides a service wherein information can be stored and retrieved from a network, the Internet, and further includes all of the steps defined by independent Claim 9.

Dependent Claim 12 further requires the step of providing a computer network and transmitting the real-time information to the computer network. Applicant submits that dependent Claim 12 is infringed by, for example, at least *Palm*. *Palm* provides access to a computer network wherein information relating to the reviewing of a restaurant is transferred to the computer network

and further includes all of the steps defined by independent Claim 9.

Dependent Claim 13 further requires the step of providing a website on the computer network and posting the real-time information on the website. Applicant submits that dependent Claim 13 is infringed by, for example, at least *AvantGo*. *AvantGo* provides software wherein a website is accessed for reviewing restaurant reviews on a computer network, the Internet, and further includes all of the steps defined by independent Claim 9.

Dependent Claim 14 further requires the step of accessing the real-time information via a computer. Applicant submits that dependent Claim 14 is infringed by, for example, at least *Palm*. *Palm* allows the accessing of information via a computer, for example their handheld assistants, and further includes all of the steps defined by independent Claim 9.

Regarding the description of infringement for all of the above-mentioned claims, Applicant has not described the manner of infringement by all of the companies because such description would be cumulative. Applicant submits that each of the companies noted above provide a device that permits the downloading of software by, for example, at least *AvantGo* and/or *VindiGo* and those devices infringe Claims 9-14 in the same manner as set forth above with respect to *Palm*. Those companies include, but are not necessarily limited to, *Nextcell*, *Sony*, *Microsoft*, *Casio*, *Compaq*, *HandRes.com*, *Handspring*, *Hewlett-*

Packard, IBM, My Docs Online, iDine, OminSky, Symbol Technologies and Kyocera Wireless.

With respect to the parties in interest, Patents+TMS, P.C. is the real party in interest in this application. As inventor, Brian M. Mattson assigned the rights to this application to Patents+TMS, P.C.

Applicant is not a party to any litigation in any way relating to the intellectual property rights of this invention or any field reasonably considered related thereto.

(102) With respect to the rejection of Claims 9-14 under 35 U.S.C. §102(b) as being anticipated by *CyberDiner Internet Café Systems* as demonstrated by the *Blue Ginger* website, Applicant respectfully submits that the claims distinctly define the present invention from that reference.

Applicant's claims require a method for transmitting real-time information regarding a restaurant by a patron of the restaurant. The method comprises the steps of: providing a first apparatus having an input means wherein the input means allows entry of the real-time information by the patron of the restaurant; inputting the real-time information into the input means of the first apparatus wherein the real-time information includes information regarding the restaurant; and transmitting the real-time information to a destination remote from the restaurant. Nothing in *CyberDiner Internet Café Systems* discloses a method for transmitting information regarding a restaurant.

On the contrary, *CyberDiner Internet Café Systems* merely discloses a system wherein *CyberDiner Internet Café Systems* installs Internet access within a business, for example, a restaurant. Nowhere on the *CyberDiner Internet Café System's* website does it disclose a website and system and/or method for transmitting real-time and/or wireless information regarding a restaurant by a patron of the restaurant.

Not until Applicant's invention was a method to provide real-time restaurant reviews ever contemplated. Applicant recognized the need to provide current and/or real-time information regarding a restaurant when creating reviews for the restaurant. This need was identified by Applicant, and Applicant invented a method to effect such reviews based on portable and/or wireless devices that effected the method for providing such a review. Such a method was never contemplated anywhere or taught anywhere prior to Applicant's invention.

Under 35 U.S.C. §102, anticipation requires that a single reference discloses each and every element of Applicant's claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d. 1241, 1245 (Fed. Cir. 1986). Moreover, anticipation is not shown even if the differences between the claims and the reference are "insubstantial" and one skilled in the art could supply the missing elements. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d. 707, 716 223 USPO 1264, 1270 (Fed. Cir. 1984).

Since *CyberDiner Internet Café Systems* fails to disclose all

of the elements defined in Claims 9-14, the rejections thereto are improper and should be withdrawn. Notice to that effect is requested.

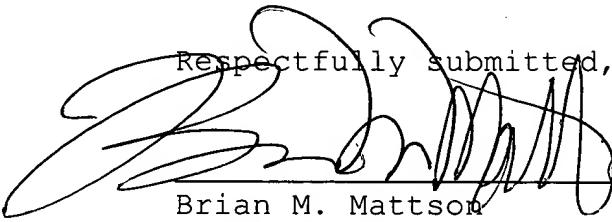
(w/s) In the Office Action, the Patent Office objected to the drawings under 37 CFR §1.83(a). Specifically, the Patent Office stated "the receiving and storing of information, the website, the positing of information on the website, and the accessing information via computer, as well as the computer, must all be shown or the feature(s) cancelled from the claim(s)."

With respect to this objection, Applicant submits that all of the necessary features in the claimed invention are presently shown in the Figure 1 or in Figure 2. 37 CFR §1.83(a) states "[C]onventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawings in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box)." Because a computer is commonly known to store and receive information, a labeled rectangular box is shown in Figure 2 to represent the storing and retrieving of information instead of numerous pages of computer program printouts and/or diagrams. Further, since the information is an intangible item, the storing and retrieving of information can only be displayed using words, not diagrams. Therefore, Applicant submits that the objection to the drawings is improper and should be withdrawn. Notice to that effect is requested.

Claims 10-14 depend from Claim 9. These claims are further believed allowable over the references of record for the same reasons set forth with respect to their parent claims since each sets forth additional structural elements and novel steps of Applicant's novel system and method, respectively.

In view of the foregoing remarks, Applicant submits that all of the claims in the application are in allowable form and that the application is now in condition for allowance. If, however, any outstanding issues remain, Applicant urges the Patent Office to telephone Applicant's attorney so that the same may be resolved and the application expedited to issue. Applicant requests the Patent Office to indicate that all claims are allowable and to pass the application to issue. Notice to that effect is requested.

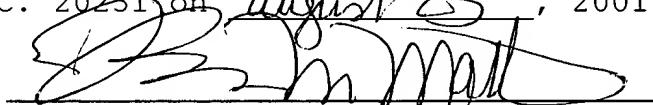
Respectfully submitted,


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CERTIFICATE OF MAILING

I hereby certify that this **Amendment** is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Asst. Commissioner for Patents, Washington, D.C. 20231 on August 23, 2001.



Brian M. Mattson (Reg. No. 35,018)

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Please amend Claim 9 as follows:

9. A method for transmitting real-time information regarding a restaurant by a patron of the restaurant, the method comprising the steps of:

providing a first apparatus [having a transmission means in the restaurant for transmitting information regarding the restaurant] having an input means wherein the input means allows entry of the real-time information by the patron of the restaurant;

inputting the real-time information into the input means of the first apparatus wherein the real-time information includes information regarding the restaurant; and

transmitting the real-time information to a destination remote from the restaurant.

Please amend Claim 10 as follows:

10. The method of Claim 9 further comprising the step of:

transmitting the real-time information regarding the restaurant to a display means to be viewed by a person outside of the restaurant.

Please amend Claim 11 as follows:

11. The method of Claim 9 further comprising the steps of:

providing a network [wherein] on which the real-time information is received and stored; and

retrieving the information from the network.

Please amend Claim 12 as follows:

12. The method of Claim 9 further comprising the steps of:

providing a computer network; and

transmitting the real-time information to the computer network.

Please amend Claim 13 as follows:

13. The method of Claim [12] 9 further comprising the steps of:
 - providing a website [on the computer network]; and
 - posting the real-time information [on] to the website.

Please amend Claim 14 as follows:

14. The method of Claim 9 further comprising the [steps] step of:
 - accessing the real-time information via a computer.